

bill. So, we have a situation say where the medical malpractice is enacted by the Legislature, the Attorney General says that it has constitutional infirmities and he would advise the Director of Insurance not to act on it, relying on the Attorney General's opinion the Department of Insurance Director does not act. At that point any citizen can go into court obtain through writ of mandamus compulsory compliance with the law. When that writ is sought then the official can state why he or she did not act pursuant to that law, and the argument would be that the law is unconstitutional. At that point all of the issues could be resolved. Whether or not the act is constitutional. If it is then the official will be compelled to act in accord with it. If it is found to be unconstitutional then naturally the official will not have to act and the law will be stricken. So, I think that this is the most expeditious and efficient method with as little tampering with the law as possible to accomplish the end of seeing that all laws which are valid are enforced, but not creating a situation where an official is put in a position of having to enforce an act in accord with the law which very well may be unconstitutional. I am in favor of Senator Cullan's amendment and I ask that you support it by adopting it.

SENATOR MARVEL: Senator Murphy we are speaking to the Cullan amendment to your bill.

SENATOR MURPHY: Senator Cullan approaches an action in mandamus which can be brought repeatedly to compel an agency to comply issue by issue one time after another without ever testing the constitutionality of a law. Simply mandating compliance on individual acts of an agency. It is far different than the method and the direction in which LB 46 goes. I would be happy to support Senator Cullan's motion as a separate bill, and I would suggest that such a proposal was not heard in the committee hearing. There was no public input to this mandamus action concept and I would ask that he would bring it as a bill in January and I would be happy to support it as such. I believe that Senator Chambers is of the impression that anyone can bring an action under this amendment at any time. That most certainly is true and it is true today. However, if they bring an action under Senator Cullan's amendment and fail they will pay the court cost for him. His amendment provides payment only if they are successful and it is a concept that I concur in because I can not see the citizenry of the state turned loose to repeatedly challenge in court an issue which may be moot to begin with. I would have to oppose this amendment because it goes in an entirely different direction. It is not considered in the concept of the bill either at the public hearing or in the title and I would suggest that it is an improper amendment to this bill. I would ask that you reject it. Like I say I would be happy to support the concept in a subsequent and separate bill if you wish to repeatedly attack mandamus, but right now as far as constitutionality goes would be totally unnecessary because the law presently provides that if anyone brings a challenge a judiciable challenge to the constitution, they will be granted fees and this is the area that I am working, the constitutional area of the bill, not the mandamus performance that Senator Cullan intends here. As I say, I think that it is an improper amendment to the subject matter. I would ask that you not adopt that amendment.